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## Appeal Decision

Site Visit made on 15 June 2021

**by R Hitchcock BSc DipCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 June 2021**

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**Appeal Ref: APP/A2335/W/20/3265749**

**New House Farm, Littledale Road, Lancaster LA2 9EX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 6 Class A of the Town and Country Planning (General Permitted Development) Order 2015.
  - The appeal is made by Mr Stephen France against the decision of Lancaster City Council.
  - The application Ref 20/00942/AD, dated 3 September 2020, was refused by notice dated 28 September 2020. The development proposed is a portal frame cattle housing.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr Stephen France against Lancaster City Council. This application is the subject of a separate Decision.

### Procedural Matters

3. The application for determination as to whether prior approval was required for the construction of an agricultural building was made under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO). The proposed development is the erection of a portal-framed cattle building. Paragraph A.2(2) of the GPDO requires, amongst other things, that a determination be made as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building.
4. The prior approval procedure as set out under Schedule 2, Part 6, Class A of the GPDO makes no provision for any determination to be made as to whether the proposal would be permitted development. However, there is dispute between the parties as to whether the development benefits from the provisions of the GPDO. I have subsequently determined this appeal in accordance with the judgement in *New World Payphones Ltd v Westminster City Council* [2019] EWCA Civ 2250 and I return to this matter below.

### Main Issues

5. The main issues are:
  - whether or not the development proposed falls within the definitional scope of Schedule 2, Part 6, Class A of the GPDO

- if so, whether the siting, design and appearance of the building are appropriate in their context.

## Reasons

### Class A

6. The *New World Payphones Ltd* judgement sets out that 'on an application to an authority for a determination as to whether its "prior approval" is required, the authority is bound to consider and determine whether the development otherwise falls within the definitional scope of the particular class of permitted development'.
7. This judgment directly conflicts with an earlier determination in *R (oao Marshall) v East Dorset DC & Pitman* [2018] EWHC 226 (Admin), as referred to by the appellant. The Marshall case found that 'the appropriate time for the authority to consider this issue is in response to an application for a certificate of lawfulness of existing use or development...or an application for planning permission. If no such applications are made, the authority has power to consider whether a development is within permitted development rights in the context of enforcement proceedings'.
8. As a more recent decision made in a higher court, until such a time the tension is resolved, I attach greater weight to the *New World Payphones Ltd* judgement. Furthermore, I find there is no reason not to apply its established principles to a development proposal under Part 6 of the GPDO. Although the case in *New World Payphones Ltd* related to an application for prior notification under Part 16 of the GPDO, they are a similar *type* of case.
9. Paragraph A.1 of Class A, Part 6 of the GPDO sets out the limitations to permitted development in Class A. Paragraph A.1(i) defines that development is not permitted by Class A if 'if it would consist of, or include, the erection or construction of, or the carrying out of any works to, a building, structure or an excavation used or to be used for the accommodation of livestock or for the storage of slurry or sewage sludge where the building, structure or excavation is, or would be, within 400 metres of the curtilage of a protected building'.
10. Paragraph D.1 of Class A defines a 'protected building' as 'any permanent building which is normally occupied by people or would be so occupied, if it were in use for purposes for which it is designed; but does not include—
  - (a) a building within the agricultural unit; or
  - (b) a dwelling or other building on another agricultural unit which is used for or in connection with agriculture;'
11. There is dispute between the main parties as to whether a bunk house at a Scout campsite lying within 400m of the site falls within the above definition. As a permanent building designed to accommodate people and support living and sleeping activities, albeit on an intermittent basis, I find the bunkhouse falls within the definition provided in Paragraph D.1. There is no qualification within the terms of Paragraph D.1 to define any necessary frequency or continuity of its use.
12. For the above reasons, I conclude that the proposed building would lie outside of the scope of development permitted under Class A of Part 6 of the GPDO.

Accordingly, the consideration of the matters of siting, design and appearance fall away in the determination of this appeal.

### **Conclusion**

13. For the reasons given above, I conclude that the proposed development would fall outside the scope of that permitted under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) and the appeal should therefore be dismissed.

*R Hitchcock*

INSPECTOR